

MBE CONTRACTING RULE

PROCUREMENT DEPARTMENT

EQUITY IN CONTRACTING SECTION

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PART VI SUPPLIER DIVERSITY & OUTREACH MBE CONTRACTING RULE

40E-7.611 Policy.

(1) The rules under this Part establish policies and procedures designed to remedy documented disparities in District contracting and the present effects of past marketplace discrimination. The rules under this Part implement specific recommendations of the District's Minority Business Availability and Utilization Study ("Study") as developed by MGT of America, Inc., dated August, 1995 and made a part of the District's Supplier Diversity & Outreach Program ("Program").

(2) It is the objective of the District to provide incentives to increase the participation of MBEs which are experiencing the effects of marketplace discrimination and have sought to do business in the District's relevant market area.

(3) The District shall evaluate the progress of its Program to determine specific program provisions that require modification, expansion, and/or curtailment.

Specific Authority 373.113 FS. Law Implemented 373.607 FS. History--New 9-25-96, Amended 12-23-01.

40E-7.621 Definitions.

(1) "Annual Contract Forecast Report" (ACFR) means a preliminary summary report estimating the number, probable dollar value and the planned solicitation date for budgeted contracts and purchases proposed for each fiscal year.

(2) "Certified Minority Business Enterprise" means a firm certified by the District pursuant to Rules 40E-7.651 and 40E-7.653, F.A.C., and Sections 287.0943(1) and (2), F.S.

(3) "Control" means to direct with primacy or cause the direction of all phases of the management and daily operations of the business, including, but not limited to, standard management practices and principles such as policy development, establishment of personnel reporting lines and operational procedures, problem solving, etc.

(4) "Domicile" means the state in which the business has its principal place of business. For corporations, domicile means the state under whose laws the corporation was formed.

(5) "Family member" means any person who is a spouse, parent, step-parent, grandparent, step-grandparent, child, step-child, grandchild, step-grandchild, sibling, half-brother, half-sister, step-sister, including adopted persons and those persons who are married to family members.

(6) "Federally recognized Indian Tribe" means an Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or other organized group or community, including any Alaskan Native Village, which is recognized by the Secretary of the Interior as having special rights and is recognized as eligible for the services provided by the United States to Indians because of their status as Native Americans.

(7) "Front" means a business concern which falsely claims to be owned and controlled by minority persons or women as defined herein.

(8) "Industry categories" mean construction, CCNA professional services, non-CCNA professional services, commodity/services procurement (manufacturing, wholesale, retail), and contractual (other) services.

(9) "Independently Operated" means not dependent on the support, influence, guidance, control or not subject to restriction, modification or limitation from a non-minority, except for customary business auxiliary services, e.g., legal, banking, etc.

(10) "Joint Venture" means an association of two or more persons or businesses carrying out a single business enterprise for which purpose they combine their capital, efforts, skills, knowledge and/or property. Joint ventures must be established by written agreement.

(11) "Minority Business Enterprise" or "MBE" is as defined in Section 288.703(2), F.S.

(12) "Minority" person means an individual who is a citizen or lawful permanent resident of the State of Florida who is:

(a) African American: a person having origins in any of the racial groups of the African dispora.

(b) Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands, including the Hawaiian Islands prior to 1778.

(c) Hispanic American: a person with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean Islands, regardless of race.

(d) Native American: a person who is a member of a federally recognized Indian tribe.

(e) An American woman.

(13) “Non-minority” means any person who does not meet the eligibility requirements of a minority person related to ethnicity, race or gender, permanent Florida residency or origins, even though such person has self-designated to be a member of a statutorily designated ethnic, racial or gender group.

(14) “Office of the Inspector General” – The District office which provides a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government as referenced in Section 20.055(2), F.S.

(15) “Origins” means the minority owner’s racial or cultural and geographic derivations, as substantiated by at least one grandparent’s birth.

(16) “Permanent resident” means a resident whose true, fixed and permanent home and principal establishment is within the State of Florida, who has lived in the State of Florida for at least six (6) months out of the last twelve (12) months and who does not routinely and habitually establish occupancy in a personally owned, mortgaged or leased residence outside of Florida.

(17) “Program” means a blend of business initiatives, administered by the District, which include race, ethnic and gender neutral; and race, ethnic and gender specific provisions designed to:

- (a) Increase diversity in District contracting and procurement; and
- (b) Remedy disparity and the present effects of past marketplace discrimination.

(18) “Relevant Market Area” means the following Florida counties: Broward; Charlotte; Collier; Dade; Glades; Hendry; Highlands; Lee; Martin; Monroe; Okeechobee; Orange; Osceola; Palm Beach; Polk; St. Lucie; Alachua; Brevard; Duval; Hillsborough; Indian River; Leon; Pinellas; Seminole; and Volusia.

(19) “Responsible” means a firm is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance.

(20) “A Small Business” means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million, or any firm based in this state which has a Small Business Administration 8(a) Certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

(21) “Sole Proprietorship” means a business concern owned by one minority person.

(22) “Supplier” means a firm that sells goods and commodities.

(23) “Third-Party Development Assistance Provider” means local, regional, state or federal agencies, institutions and business development organizations that provide technical, management, financial and other related assistance to small, minority-owned businesses.

Specific Authority 373.113 FS. Law Implemented 288.703, 287.0943(1), (2), 373.607 FS. History–New 9-25-96, Amended 12-23-01.

40E-7.631 Proposal Evaluations and MBE Criteria.

- (1) For contracts awarded based on evaluation criteria, there shall be a MBE participation criterion of 10% or 20% of the total points awarded. The District shall award points as reflected in Table 7.6-3 below. Maximum points will be awarded to the proposer if 30% or more of the total project work is performed by MBE firms. Percentages reflect the amount of total contract value proposed to be assigned to MBE firms. In the case of CCNA contracts, the percentages reflect the amount of total project work which shall be equated to the project dollars assigned to MBE firms.

Table 7.6-3

10 POINTS FOR MBE PARTICIPATION		20 POINTS FOR MBE PARTICIPATION	
≥30% =	10 points	≥30% =	20 points
≥27% =	9 points	≥27% =	18 points
≥24% =	8 points	≥24% =	16 points
≥21% =	7 points	≥21% =	14 points
≥18% =	6 points	≥18% =	12 points
≥15% =	5 points	≥15% =	10 points
≥12% =	4 points	≥12% =	8 points
≥ 9% =	3 points	≥ 9% =	6 points
≥ 6% =	2 points	≥ 6% =	4 points
≥ 3% =	1 point	≥ 3% =	2 points

(2) The proposer shall identify all certified MBE firms which will be utilized as subcontractors, and delineate for each the specific elements of work each MBE firm will be responsible for performing and the dollar value of the work as a percentage of the total contract value. All proposals with MBE participation shall contain documentation, signed by both the proposer and the selected MBE subcontractors which: confirms their intent to establish a business relationship and confirms the MBE participation percent. All MBEs must submit proof of certification with the proposal.

(3) The percentage of MBE participation will be calculated by dividing the proposer's expenditures to a MBE subcontractor for providing direct labor or a bona fide service by the total project dollars as identified in the proposal.

(4) A proposer may count toward its MBE participation the fees or commissions charged for providing direct labor or a bona fide service, such as professional, technical, consultant or managerial services.

(5) A District certified MBE firm shall be prohibited from acting as a subcontractor to its own firm for the purposes of providing the proposer with MBE participation. A proposer shall not do business with its own entity in an effort to circumvent this Rule.

(6) For the purposes of this rule, the District will not count toward a proposer's MBE participation any portion or portions of the MBE subcontractor's work that is subcontracted back to:

- (a) The proposer, either directly, or through any other company or firm owned or controlled by the proposer, or
- (b) Any non-MBE firm.

(7) For the purposes of this rule, a MBE subcontractor shall not be allowed to subcontract all or a majority of the subcontractual portion of the work to another non-MBE firm or firms. A MBE subcontractor shall be prohibited from engaging in a subcontractual agreement with the intent of collecting a broker's fee or commission. A MBE subcontractor shall also be prohibited from entering into a subcontractual agreement with a firm whose employees perform none of the direct labor or service activities specified in the contract.

(8) Participation by a MBE firm shall not be considered and the MBE firm shall be disqualified if the owner of the MBE firm enters into an agreement with a non-MBE firm with the intent of securing employment with that non-MBE firm during the course of performing a District contract.

Specific Authority 373.113 FS. Law Implemented 373.607 FS. History—New 9-25-96, Amended 12-23-01.

40E-7.637 District Implementation.

The District shall make affirmative efforts to ensure all businesses have the maximum opportunity to participate in the District's contracting and procurement processes. The following are examples of affirmative efforts by the District:

(1) Establish an office with sufficient staff and the necessary authority and responsibility to implement the rules established under this Part.

(2) Identify all competitive contracting opportunities within the District budget.

(3) Include MBEs on contract solicitation lists or vendor lists.

(4) Monitor and maintain records sufficient for verification of steps taken and results achieved to maximize MBE participation.

(5) Evaluate the District's efforts to achieve MBE participation.

(6) When requested by an unsuccessful proposer, conduct debriefing sessions on awarded contracts to explain why proposals may have been unsuccessful.

(7) Coordinate outreach with Procurement and contracting departments to offer instructions and clarify proposal specifications, procurement policy, procedures, and general bidding requirements.

(8) Divide purchases and contracts into smaller units, areas, or quantities where feasible and likely to increase MBE participation without substantial adverse fiscal impact to the District.

(9) Ensure that proposals, specifications, and plans are written so as not to unreasonably limit MBE participation.

(10) Maintain a database of MBEs and encourage MBEs to participate in training programs offered by the District and/or third-party development assistance providers.

(11) Encourage the development of MBEs by using services and assistance provided by the Small Business Administration and other third party development assistance providers.

(12) Refer businesses to third party development assistance providers for bonding, financial and technical assistance.

(13) Promote the District's Program internally and externally, through the use of an annual marketing and outreach plan.

(14) Collect and maintain information and reports to provide guidance to the Governing Board and staff regarding MBE participation.

(15) Schedule pre-proposal meetings, where appropriate, to inform potential contractors of Program requirements and other proposal requirements.

(16) Maintain a file of successful proposal documents from past procurement and encourage MBEs to review and evaluate such documents.

(17) Provide instructions on job performance requirements.

(18) Provide information and assistance on continued certification procedures, subcontracting practices, and bonding requirements.

(19) Provide supplier diversity training to District staff.

(20) Review multi-year contracts, amendments, and change orders for opportunities to increase MBE participation.

(21) Continue to investigate race, ethnic, and gender-neutral provisions to lessen barriers for participation by any business wishing to do business with the District.

(22) Place notices of contract opportunities at District service centers, in the Dodge report, MBE trade association newsletters, major local or regional newspapers, and minority- and woman- focused media.

(23) Plan and participate in vendor training seminars for the purpose of informing potential bidders/proposers/vendors of the District's Program and the business opportunities available.

(24) Serve as liaison with economic development organizations and agencies working in support of economic development in the minority community.

(25) Provide notices of business proposals to facilitate the participation of MBEs.

(26) Create and disseminate MBE directories to contractors for use in identifying subcontractors and material suppliers.

(27) Consider reducing bonding and insurance requirements for smaller projects.

Specific Authority 373.113 FS. Law Implemented 373.607 FS. History--New 9-25-96, Amended 12-23-01.

40E-7.645 Compliance.

(1) The District shall monitor and evaluate Program performance and compliance. Failure to comply with the MBE requirements of an awarded contract shall result in suspension or debarment of the firms or individuals involved.

(2) Suspension or debarment of firms for activity contrary to the Program, and the appeal process, shall be carried out pursuant to Rule 40E-7.664, F.A.C.

(3) Each District contract awarded with points provided for MBE participation shall contain a provision incorporating the rules under this Part by reference and a statement that failure to comply with any of the requirements by a contractor shall be considered a breach of contract.

(4) Each District contract shall contain a provision requiring the contractor, during the term of the contract, to comply with, as to tasks and proportionate dollar amounts throughout the term of the contract, all plans made in their proposal for use of MBEs.

(5) Each District contract shall contain a provision requiring maintenance of records, and information necessary to document compliance with the rules under this Part and shall include the right of the District to inspect such records.

(6) Each District contract shall contain a provision prohibiting any agreements between a contractor and a MBE in which the MBE promises not to provide subcontracting quotations to other bidders or potential bidders.

(7) The District shall ensure program compliance by a contractor or its participating subcontractors through contract provisions. Contractor compliance provisions include:

(a) Withholding from the contractor ten percent (10%) of all future payments, exclusive of any retainage, under the contract until it is determined that the contractor is in compliance;

(b) Withholding from the contractor all future payments under the contract until it is determined that the contractor is in compliance;

(c) Refusal of all future proposals submitted to the District by the Contractor for a period of three (3) years;

(d) Initiation of decertification action;

(e) Cancellation of the contract.

(8) Any individual who falsely represents any entity as a MBE or does not fulfill the contractual obligations is subject to the penalties under Section 287.094, F.S. To ensure that all obligations under contracts awarded to a MBE are met, the contractor's MBE efforts throughout the performance of the contract shall be reviewed. The contractor

shall advise the District of any situation in which regularly scheduled progress payments are not made to MBE subcontractors.

(9)(a) After the date of contract execution, prime contractors shall make good faith efforts to maintain the level of MBE participation established in the contract by substituting a non-complying MBE subcontractor with another MBE subcontractor.

(b) Prime contractors must notify the District when the need to replace a MBE subcontractor arises.

(10) The District will not transact business with any vendor placed on the discriminatory vendor list maintained by the Department of Management Services pursuant to Section 287.134, F.S.

Specific Authority 373.113 FS. Law Implemented 287.134, 287.094, 373.607 FS. History--New 9-25-96, Amended 12-23-01.

40E-7.651 Reciprocal Application.

(1) Reciprocal application shall be granted to applicant businesses which have been certified by other jurisdictions and meet the District certification standards.

(2) An applicant business is not eligible for reciprocal application if the business exceeds a net worth of \$5 million. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

(3) Eligibility for reciprocal application shall be contingent upon an agreement between the District and another certifying jurisdiction within the state of Florida. The applicant businesses seeking reciprocal application must submit to the District a copy of the current certification from the certifying jurisdiction and a copy of the completed application submitted to the certifying jurisdiction along with a statement of continued eligibility.

Specific Authority 373.113 FS. Law Implemented 373.607 FS. History--New 9-25-96, Amended 12-23-01.

40E-7.653 Certification Eligibility.

(1) The District shall have the authority to accept, review, approve, and deny applications for MBE certification. The District shall also have the authority to decertify, suspend and/or debar firms pursuant to Rule 40E-7.664, F.A.C.

(2) Applicant businesses shall submit applications for MBE certification using Form No. 0964, "MBE Certification Application" effective date 12-23-01, which is hereby incorporated by reference and which can be obtained from the District upon request. Mailing addresses must include the number, name of the street, suite number, if any, and correct zip code. A post office box will not be acceptable absent a street address. An applicant business shall provide in the MBE Certification Application that the applicant business has sought to do business within the District's relevant market area prior to the time a proposal is submitted.

(3) An applicant business must satisfy subsection (4) below in order to be considered 51% owned by minority persons. The ownership exercised by minority persons shall be real, substantial, and continuing, and shall go beyond mere pro forma ownership of the firm as reflected in its ownership documents. In its analysis, the District may also consider the transferal of ownership percentages with no exchange of capital at fair market value.

(4) If present ownership was obtained by transfer, the minority person on whom eligibility is based must own 51% of the applicant firm for a minimum of two (2) years, when any previous majority ownership interest in the firm was by a non-minority who is or was a relative, former employer, or current employer of the minority person on whom eligibility is based. This requirement shall not apply to minority persons who are otherwise eligible who take a 51% or greater interest in a firm that requires professional licensure to operate and who will be the qualifying license holder for the firm when certified. A transfer made within a related immediate family group from a non-minority person to a minority person in order to establish ownership by a minority person shall be deemed to have been made solely for purposes of satisfying certification criteria and shall render such ownership invalid for purposes of qualifying for such certification if the combined total net asset value of all members of such family group exceeds \$1 million. For purposes of this subparagraph, the term "related immediate family group" means one or more children under 16 years of age and a parent of such children or the spouse of such parent residing in the same house or living unit.

(a) The applicant business must satisfy either subparagraphs 1., 2., or 3. below:

1. In a corporate form of organization, the minority shareholders of the corporation must own at least 51% of all issued stock. Minority shareholders who own at least 51% of each and every class of stock will be presumed to have satisfied the conditions of this rule. Where the minority shareholders do not own at least 51% of each class of stock, the applicant shall establish that the aggregate of all stock owned by minority shareholders is equal to at least 51% of all issued shares. The applicant may establish that the aggregate of all stock owned by minority shareholders is equal to at least 51% of all issued shares by:

a. Using the par value of the stock, but only where each class of stock has a par value;

- b. Using the fair market value of each class of stock;
 - c. Showing the numerical ratio of stock ownership where all shares, regardless of class, have the same par value or fair market value; or
 - 2. In a partnership form of organization, the minority partners must own at least 51% of the partnership, or
 - 3. In any other form of organization, the minority owners must own at least 51% of the business interest of the organization, including, but not limited to, 51% of the ownership of assets, dividends, and intangible assets such as copyrights and patents.
- (b) The minority owners must demonstrate that they share income, earnings and any other benefits from the business concern which are accorded to any other owner. The minority owners' share of income, earnings and benefits shall be commensurate with the percentage of their ownership in the business concern, including salaries, draws, bonuses, commissions, insurance coverage, proceeds from business investments and properties, and profit-sharing.
- (c) The minority owners must demonstrate that they share in all the risks assumed by the business firm. Such sharing of business risks shall be demonstrated through the minority owners' primary role in decision-making, and negotiation and execution of related transaction documents either as individuals or as officers of the business. The minority owners' sharing in business risks shall be commensurate with their percentage of ownership, including start-up costs and contributions, acquisition of additional ownership interests, third-party agreements, and bonding applications. Start-up contributions may be space, cash, equipment, real estate, inventory or services estimated at fair market value. All contributions of capital by the minority owners must be real and substantial. The following are not real and substantial capital contributions:
- 1. Promises to contribute capital;
 - 2. Notes payable to the applicant business;
 - 3. Notes payable to the non-minority owners or to the non-minority family members of any owner; and
 - 4. Past services rendered by the minority person as an employee, rather than as a decision-maker.
- (d) The business firm cannot at any time enter into any agreement, option, or scheme, or create any rights of conversion, which, when exercised, would result in less than 51% minority ownership or in the loss of the minority owners' control of the business firm.
- (5) An applicant must establish that the minority owner seeking certification be the license holder, or the professional license holder and possess the authority to control and exercise dominant control over the management and daily operations of the business.
- (a) The discretion of the minority owners shall not be subject to any formal or informal restrictions (including, but not limited to, by-law provisions, purchase agreements, employment agreements, partnership agreements, trust agreements or voting rights, whether cumulative or otherwise), which would vary or usurp managerial discretion customary in the industry.
- (b) The minority owners must exercise sufficient management and technical responsibilities and capabilities to maintain control of the business. If the owners of the business who are not minority persons are disproportionately responsible for the operations of the business, then the business shall not be considered to be controlled by minority owners.
- (c) The control exercised by the minority owners shall be real, substantial and continuing. In instances where the applicant business is found to be a family-operated business, with duties, responsibilities and decision-making occurring either jointly or mutually among owners and principals, or severally along managerial and operational lines between minority owners and non-minority owners or principals, the minority owners shall not be considered as controlling the business. Where the minority owners substantiate that the assumption of duties is not based on their lack of knowledge or capability to independently make decisions regarding the business' management and day-to-day operations, the minority owners' control may not be affected. The minority owners shall establish that they have dominant responsibility for the management and daily operations of the business as follows:
- 1. The minority owners shall control the purchase of goods, equipment, business inventory and services needed in the day-to-day operation of the business. The minority owners' control of purchasing shall be evidence of their knowledge of products, brands, manufacturers, types of equipment and products and their uses, etc., rather than merely reflective of the minority owners' ministerial execution of the ordering/acquisition of goods.
 - 2. The minority owners shall control the hiring, firing and supervision of all employees, and the setting of employment policies, wages, benefits and other employment conditions. In instances where minority owners have delegated the hiring and firing of employees, the minority owners shall demonstrate that their knowledge and capability is sufficient to evaluate the employees' performance in the given industry.

3. The minority owners shall have knowledge and control of all financial affairs of the business. The ability of any non-minority owner or employee to sign checks and enter into financial transactions on behalf of the business shall be considered in determining financial control. The minority owners shall expressly control the investments, loans to/from stockholders, bonding, payment of general business loans, payroll and establishment of lines of credit.

4. The minority owners shall have managerial and technical capability, knowledge, training, education and experience required to make decisions regarding that particular type of work. In determining the applicant business' eligibility, the District will review the prior employment and educational requirements for the given industry, the previous and existing managerial relationship between and among all owners, especially those who are familiarly related, and the timing and purpose of management changes. If the minority owners have delegated management and technical responsibility to others, the minority owners must substantiate that they have caused the direction of the management of the business and each phase of the technical operations of the business through their demonstrable knowledge of and capability in the delegated areas.

5. The minority owners shall display independence and initiative in seeking and negotiating contracts, accepting and rejecting bids and in conducting all major aspects of the business in regard to any and all bidding and contracting. In instances where the minority owners do not directly seek or negotiate contracts, prepare estimates, or coordinate with contracting officials, but claim to approve or reject bids and contractual agreements, the minority owners shall demonstrate that they have the knowledge and expertise to independently make contractual decisions.

6. The minority owners shall substantiate personal direction and actual involvement with all major aspects of the applicant business. The major aspects shall be defined as those tasks essential to accomplish all objectives and operations related to those services or commodities for which the applicant business requests certification.

(6) To establish that it is a small minority business concern, the applicant shall:

(a) Demonstrate that it is an independently owned and operated business concern. In assessing business independence, the District shall consider all relevant factors, including the date the firm was established, the adequacy of its resources, and the degree to which financial, managerial and operational relationships exist with other persons or business concerns. For purposes of this rule, the District's consideration of such financial relationships, managerial or operational relationships shall not be affected by arrangements made out of necessity or due to the business' inability to secure traditional capitalization through banks, lending institutions or others.

(b) Demonstrate that it is not an affiliate of a non-minority business nor share (on an individual or combined basis) common ownership, directors, management, employees, facilities, inventory, financial resources and expenses, equipment or business operations with a non-minority person or business concern which is in the same or an associated field of operation.

(c) To establish that it is a small business concern, the applicant shall demonstrate that the net worth of the business concern, together with its affiliates, does not exceed five (5) million. In determining the net worth of the business and its affiliates, the District shall consider the most recent federal tax returns or annual financial statements for the business. As applicable to sole proprietorships, the 5 million dollar net worth requirement shall include both personal and business investments.

(d) To establish that it is a small business concern, the applicant shall provide documentation to demonstrate that it employs two-hundred (200) or fewer permanent, full-time employees. In determining whether the applicant meets the criteria for a small business, the District shall consider such documentation as:

1. Personnel records.
2. Florida Quarterly Unemployment Reports.
3. Annual Federal Unemployment Report.
4. Payroll ledgers.
5. Employee leasing agreement.

(e) The applicant must demonstrate that it is domiciled in Florida. In determining whether the applicant is domiciled in Florida, the District shall consider such documentation as:

1. Articles of Incorporation.
2. Partnership Agreement.
3. Certification required to be filed pursuant to Section 620.108, F.S.
4. Business licenses.

(7) The applicant business must demonstrate that it is at least 51% owned by minority persons who are permanent residents of Florida.

(8) The applicant business must provide evidence of the minority status of owners who are claiming to be minority persons, as follows:

(a) Demonstrate that the applicant business owners' ethnicity qualifies them as an eligible person pursuant to subsection 40E-7.621(12), F.A.C. In determining the ethnicity of a person, the District shall consider any of the following:

1. Birth certificate.
2. Passport.
3. Citizenship papers.
4. Driver license.
5. Voter registration card.
6. Death certificate.
7. Membership in a federally recognized Indian tribe.
8. Tribal registration.
9. Any other documentation that tends to substantiate the person's claim of minority status.

(b) Demonstrate that the applicant business owners' gender qualifies them as an eligible person pursuant to subsection 40E-7.621(12), F.A.C. In determining the gender of a person, the District shall consider any of the following:

1. Birth certificate.
2. Passport.
3. Citizenship papers.
4. Driver license.
5. Any other documentation that tends to substantiate the person's claim of minority status.

(c) Demonstrate that the applicant business owners' origin qualifies them as an eligible person pursuant to subsection 40E-7.621(15), F.A.C. When determining a person's origins, the District shall accept any of the following documentation in order to clearly establish a direct line of descent:

1. Marriage licenses.
2. Divorce decrees.
3. Adoption papers, to show the adopted person's original, not adopted, origins.
4. Court orders which have the effect of changing a person's name.
5. An affidavit, except that of an official of the federal government, a state government or a municipality.
6. A "family tree" or "family chart".

(9) The applicant business shall establish that it is currently performing or seeking to perform a useful business function in each specialty area requested by the applicant. For purposes of this rule, "currently" means three months prior to the District's receipt of the application for certification. The applicant business is considered to be performing a useful business function when it is responsible for the execution of a distinct element of the work of a contract and carrying out its responsibilities in actually performing, managing and supervising the work involved. The useful business function of an applicant business shall be determined in reference to the products or services for which the applicant business requested certification. When the applicant business is required by law to hold a license, other than an occupational license, in order to undertake its business activity, the applicant business shall not be considered to be performing a useful business function unless it has the required license(s).

(a) In determining if an applicant business is acting as a regular dealer and that it is not acting as a conduit to transfer funds to a non-minority business, the District shall consider the applicant business' role as agent or negotiator between buyer and seller or contractor. Though an applicant business may sell products through a variety of means, the District shall consider the customary and usual method by which the majority of sales are made in its analysis of the applicability of the regular dealer requirements. Sales shall be made regularly from stock on a recurring basis constituting the usual operations of the applicant business. The proportions of sales from stock and the amount of stock to be maintained by the applicant business in order to satisfy the requirements of this rule will depend on the business' gross receipts, the types of commodities sold, and the nature of the business' operation. The stock maintained shall be a true inventory from which sales are made, rather than be a stock of sample, display, or surplus goods remaining from prior orders or by a stock maintained primarily for the purpose of token compliance with this rule. Consideration shall be given to the applicant's provision of dispensable services or pass-through operations which do not add economic value, except where characterized as common industry practice or customary marketing procedures for a given product. An applicant business acting as broker or packager shall not be regarded as a regular dealer absent showing that brokering or packaging is the normal practice in the applicant business' industry. Manufacturer's representatives, sales representatives and non-stocking distributors shall not be considered regular dealers for purposes of the rules under this Part.

(b) Documentation to substantiate a useful business function may include but not be limited to the following:

1. Executed purchase orders.
2. Paid invoices.
3. Executed contracts.

Specific Authority 373.113 FS. Law Implemented 373.607 FS. History--New 9-25-96, Amended 6-16-98, 12-23-01.

40E-7.654 Grandfather Clause.

MBE firms that are certified on the effective date of the rule amendment shall remain certified until the firms' certification expires. However, MBE firms that fail to maintain minority ownership and control will be immediately decertified. Pursuant to subsection 40E-7.653(4), F.A.C., the District retains the right to reevaluate the certification of any business at any time.

Specific Authority 373.113 FS. Law Implemented 373.607 FS. History--New 12-23-01.

40E-7.655 Certification Review Procedures.

(1) Upon receipt, all applications for MBE certification shall be given an initial screening to ensure appropriate signature and completeness. The application must bear the original signature of the minority owner who is submitting the application for review. If the application is submitted by means of a facsimile machine, the signature page of the application, with the original signature of the minority owner, must be submitted to the District within thirty (30) days of facsimile submission.

(2) Within sixty (60) days following initial receipt of the application, the District will request the applicant business to furnish omitted items or additional information. If all requested information or items are not received by the District within thirty (30) days from the date of the request, the District will deny the applicant business certification as a MBE.

(3) The on-site verification review may be conducted by the District upon receipt of the completed application. Failure to cooperate with the scheduling of the on-site review or during the on-site review shall result in the denial of the application.

(4) Applicants determined eligible shall receive a certification letter stating the length of time for which the business has been certified, the specialty areas of the business, the minority status categories in which the business is certified, and the business' responsibilities set out in Section 287.0943(1) and (2), F.S. Once certified, an applicant shall remain certified for a period of three (3) years unless the applicant fails to follow this rule and is sanctioned pursuant to Rule 40E-7.645, F.A.C. The District retains the right to reevaluate the certification of any business at any time.

(5) Applicants determined ineligible shall receive a letter stating the basis for the denial of certification and citing applicable rules and shall not be eligible to submit new applications until 180 days after the date of the notice of denial of certification or the District's final agency order denying certification.

Specific Authority 373.113 FS. Law Implemented 120.53, 120.54(1), 120.60(2), 373.607 FS. History--New 9-25-96, Amended 12-23-01.

40E-7.661 Recertification Review Procedures.

(1) Applications for recertification shall be submitted using Form No. 0958, "Application for Recertification", effective date 12-23-01, which is hereby incorporated by reference and available from the District upon request.

(2) The District will notify MBE's no later than sixty (60) days before the end of the certification period. If the minority owner is unable to use the recertification affidavit because changes in the applicant's business have occurred, the minority owner shall notify the District in writing. Recertification requests must be filed in the District no later than the last effective date of the current certification period. Recertification requests received by the District after the expiration of the certification period shall be given a ten (10) day grace period.

(3) Upon receipt, all recertification requests shall be given an initial screening to ensure appropriate signature and completeness. Within sixty (60) days following initial receipt of the applicant's recertification request, the District will request the applicant to furnish omitted or additional information. If the requested information or items are not received by the District within thirty (30) days from the date of the request, the District will deny the applicant recertification as a MBE.

(4) The on-site verification review may be conducted by the District upon receipt and review of the recertification request. Failure to cooperate with the scheduling of the on-site review or during the on-site review shall result in the denial of recertification.

(5) Recertification shall be granted when the applicant has complied with this rule and substantiates eligibility for MBE status.

(6) Applicants deemed eligible shall receive a recertification letter stating the length of time for which the business has been certified, the specialty areas of the business, and the minority status categories in which the business is certified. Once recertified, an applicant shall remain certified for a period of three (3) years unless the District determines that the applicant failed to comply with this rule. If an applicant fails to comply with this rule, the District may apply any of the sanctions referenced in Rule 40E-7.645, F.A.C. The District retains the right to reevaluate the certification of any business at any time.

(7) Applicants determined ineligible shall receive a letter stating the basis for the denial of recertification and shall not be eligible to submit a new application for 180 days after the date of the notice of denial of recertification or the District's final agency order denying recertification.

(8) If an application for recertification is timely submitted, a MBE shall remain certified until the District has made a determination concerning eligibility.

(9) Applicant businesses failing to submit the District recertification application as required by subsection (1) of this section, shall not be considered certified immediately subsequent to the anniversary date of the last certification. Applicant businesses shall receive written notification of the expiration of prior certification.

Specific Authority 373.113 FS. Law Implemented 373.607 FS. History—New 9-25-96, Amended 12-23-01.

40E-7.664 Suspension, Debarment, Revocation or Decertification.

(1) Prior to suspending, debarring, revoking or decertifying a firm from the Program, the District shall inform the firm in writing by certified mail, return receipt requested, of the facts or conduct which warrant such action.

(2) Facts or conduct that would warrant suspension, decertification, or debarment include:

(a) Fraud, deceit, or misrepresentation for the purpose of obtaining MBE status.

(b) Refusal to permit on-site inspections.

(c) Failure to report changes regarding the business entity or its minority ownership which affects the MBE's eligibility for certification.

(3) The written notice issued by the District shall contain:

(a) The statutory provision(s) or rule(s) of the Florida Administrative Code which is alleged to have been violated;

(b) The specific facts or conduct relied upon to justify the suspension, debarment, revocation or decertification; and

(c) A statement that the firm has the right to file a request for an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., and Rule 28-106.111, F.A.C., within 21 days of receipt of the notice.

(d) A statement that the suspension, debarment, revocation or decertification shall become conclusive and final agency action if no request for a hearing is filed within the time frames prescribed in Chapter 120, F.S., and Chapter 28-106, F.A.C.

(4) All requests for a hearing pursuant to Sections 120.569 and 120.57, F.S., shall be made in the form of a Petition in accordance with Chapter 28-106, F.A.C.

Specific Authority 120.569, 373.113 FS. Law Implemented 120.569, 120.57, 373.607 FS. History—New 9-25-96, Amended 12-23-01.

40E-7.6645 Penalties for Fraudulent MBE Representation.

Applicant businesses are advised that criminal penalties can be imposed under Section 775.082, 775.083 or 775.084, F.S., for fraudulent MBE representation. It is the intent of the District to notify the proper law enforcement agency in all such instances.

Specific Authority 373.113 FS. Law Implemented 373.607 FS. History—New 9-25-96, Amended 12-23-01.

40E-7.665 Application for Additional Areas of Certification.

(1) Any business that is currently certified shall submit a written request when requesting certification as a MBE in additional specialty areas.

(2) Within sixty (60) days following initial receipt of the request, the District will request the applicant business to furnish omitted or additional information. If all the requested information or items are not received by the District within thirty (30) days from the date of the request, the District will deny the applicant business certification as a MBE in the requested additional specialty areas.

(3) The on-site verification review may be conducted by the District upon receipt and review of the request. Failure to cooperate with the scheduling of the on-site review or during the on-site review shall result in the denial of certification in the requested additional specialty areas.

(4) Certification in the additional specialty areas shall be granted when the applicant business has complied with this rule and substantiates eligibility for MBE status.

(5) Applicant businesses determined eligible shall receive a certification letter stating the length of time for which the business has been certified, all the specialty areas of the business, and the minority status categories in which the business is certified.

(6) Applicant businesses determined ineligible shall receive a letter stating the basis for the denial of certification in the additional specialty areas and shall not be eligible to submit a new application for certification for 180 days after the date of the notice of denial of certification or the District's final agency order denying certification. If a firm is denied twice within a year the firm shall not be able to reapply for a period of one (1) year from the date of the second denial, or if appealed, the date of the decision to deny is upheld.

(7) Submittal of a request for certification in additional specialty areas shall not extend the applicant business' original certification period.

Specific Authority 120.53, 373.113 FS. Law Implemented 120.53, 373.607 FS. History—New 9-25-96, Amended 12-23-01.

40E-7.667 Administrative Hearings.

If an applicant business believes it has been wrongly denied certification or recertification as a MBE, the applicant business may file a request for hearing pursuant to Sections 120.569 and 120.57, F.S., in the form of a petition in accordance with Chapter 28-106, F.A.C., within 21 days of receipt of Notice of Denial of certification.

Specific Authority 120.53, 373.113 FS. Law Implemented 120.53, 373.607 FS. History—New 9-25-96, Amended 12-23-01.



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